



STATE BOARD OF EQUALIZATION

January 7, 1953

Mr. C--- W. K---
Public Accountant
XXX --- --- Avenue
---, California

Dear Mr. K---:

You ask whether the sale of equipment by a corporation to a stockholder for the stockholder's capital stock in the corporation is subject to sales tax.

We assume that the corporation holds or uses the equipment in the course of an activity for which it is required to hold a seller's permit.

Section 6367 of the California Sales and Use Tax Law, copy enclosed, exempts from tax "occasional sales". Section 6006.5(b) defines "occasional sales" as "any transfer of all or substantially all of the property used by a person in the course of such an activity (one that requires the holding of a seller's permit) when after such transfer the real or ultimate ownership of such property is substantially similar to that which existed before such transfer". Stockholders are considered as having the real or ultimate ownership of corporate property.

You will note that Section 6006.5(b) requires two factors to exist before such a transfer is exempt: 1. the transfer must be of all or substantially all of the property held or used in an activity for which a seller's permit is required and 2. the real or ultimate ownership must be substantially unchanged after the transfer.

Your letter indicates that neither of these factors are present in this transaction. As to the first, it is apparent that the corporation is to continue in business. Thus, substantially all of the property is not being transferred. As to the second, the ownership of the property will be in one former stockholder who you state was not the major stockholder. The fact that the stockholder surrendered his capital stock for the property is immaterial as that stock has a value of \$6,000.00. Thus, there is a transfer of title and possession for a consideration.

It is our opinion the transfer is subject to sales tax.

Very truly yours,

cc: --- - Compliance
JHM:TJ

E. H. Stetson
Tax Counsel